03.

SUPREME COURT OF THE UNITED STATES.

No. 28.

ANDREW PEIRCE, JR., AND THOS. W. PEIRCE, PLAINTIFFS IN ERROR,

vs.

THE STATE OF NEW HAMPSHIRE,

IN ERROR TO THE SUPERIOR COURT OF JUDICATURE FOR THE FIRST JUDICIAL DISTRICT OF NEW HAMPSHIRE.

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J. & G. S. Gideon, Printers.

And now, after a full hearing, it is considered by the court that the said exceptions be overruled, and that judgment be entered upon the said verdict. And thereupon it is considered by the court, that the said Thurlow pay a fine of one hundred and sixty dollars, and costs of prosecution taxed at $46 33, and that he stand committed until this sentence be performed.

Attest, E. SHILLABER, *Clerk.*

COMMONWEALTH OF MASSACHUSETTS, *Essex, ss.*

I, Ebenezer Shillaber, clerk of the supreme judicial court within and for the county of Essex, do certify, that the foregoing is a true copy of the record in the case of the Commonwealth against Samuel Thurlow.

In witness whereof I have hereunto set my hand, and the seal of said court, at Salem, December 27, 1842.

[L. S.] E. SHILLABER,
Clerk of S. J. court.

Filed, th January, 1843.

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J. & G. S. Gideon, Printers.

Strafford, ss.

The State of New Hampshire to the honorable Joel Parker, esquire, chief justice of our court of common pleas, within and for said county, greeting:

Whereas, in the record and process, and in the giving judgment in a suit which was before the said court of common pleas, holden at Dover, within and for said county of Strafford, on the fourth Tuesday of May, A. D. 1842, between the State of New Hampshire and Andrew Peirce, jr., and Thomas W. Peirce, both of said Dover, merchants, which suit was an indictment found at the January term, 1842, of said court, by the grand jurors for the body of said county, against said Andrew and Thomas, who presented that said Andrew and Thomas, at Dover aforesaid, on the twentieth day of January, A. D. 1842, did unlawfully, knowingly, wilfully, and without license therefor from the selectmen of said Dover, the same being the town where the said Andrew and Thomas then resided, sell to one Aaron Sias one barrel of gin, at and for the price of eleven dollars eighty-five cents, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State, as it is said, manifest error hath happened, to the great damage and injury of them, the said Andrew and Thomas, as we have been informed by their grievous complaint.

We, desiring that error, if any has been in this behalf, be corrected in due manner, and full and speedy justice done to the parties aforesaid, command you, that if judgment be therein given, you distinctly and openly send us the record and process of the suit aforesaid, with all matters touching them, together with this writ, so that we may have them at our superior court of judicature, to be holden at Dover, within and for our said county of Strafford, on the second Tuesday of December next, that, inspecting the record and process aforesaid, we may, for the correcting that error therein, further cause to be done what of right, and according to the law of the land, ought to be done.

Witness, Joel Parker, esquire, at Dover aforesaid, the twentieth day of August, A. D. 1842.

F. COGSWELL, *Clk.*

A true copy.
Attest: J. H. SMITH, *Clk.*

Stote of New Hampshire, Strafford, ss.

Court of common pleas, clerk's office,
August 20th, 1842.

In obedience to the foregoing precept, I herewith return a copy of the indictment and of the record aforesaid.

J. H. SMITH, *Clk.*

A true copy.
Attest: J. H. SMITH, *Clk.*

State of New Hampshire, Strafford, ss:

I, John H. Smith, clerk of the superior court of judicature for said county, hereby certify that the foregoing is a true copy of the original on file.

In testimony whereof, I have hereunto set my hand, and affixed the [L. S.] seal of said court, this 3d day of September, A. D. 1843.

JOHN H. SMITH, *Clk.*

The State of New Hampshire, Strafford, ss:

[L. S.] To the sheriff of any county in this State, or his deputy, greeting:

Whereas, in the record and process, and also in the giving judgment in a suit which was before our justices of court of common pleas, holden at Dover, within and for our said county of Strafford, on the fourth Tuesday of May, A. D. 1842, which suit was an indictment found at the January term, 1842, of said court, by the grand jurors for the body of said county, against Andrew Peirce, jr., and Thomas W. Peirce, both of Dover aforesaid, merchants; which indictment set forth that said Andrew and Thomas, at Dover, in said county, on the twentieth day of January, A. D. 1842, did unlawfully, knowingly, and wilfully, and without license therefor from the selectmen of said Dover, the same being the town where the said Andrew and Thomas then resided, sell to one Aaron Sias one barrel of gin, at and for the price of eleven dollars eighty-five cents, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State; in which suit judgment was rendered at said May term of said court that said Andrew and Thomas pay a fine of thirty-five dollars to the said county of Strafford, and the costs of this prosecution, whereof the said Andrew and Thomas are convict, manifest error hath happened, as it is said, to the grievous damage and injury of said Andrew and Thomas, as by their complaint we perceive; the record of which judgment and process we, for certain reasons, have caused to be brought before us in our superior court of judicature.

We, therefore, desiring that the error, if there be any, may be duly corrected, and full and speedy justice herein done in the premises, command you, that you make known to the State of New Hampshire that they appear, by their attorney, before our justices of our superior court of judicature, next to be holden at Dover, within and for our said county of Strafford, on the second Tuesday of December next, to hear the record and process aforesaid, if they deem it expedient, and further to do and receive that which the same court shall consider in this behalf; and have you there this writ, with your doings therein.

Witness, Joel Parker, esquire, at Dover, in said county, the twentieth day of August, A. D. 1842.

F. COGSWELL, *Clk.*

State of New Hampshire, Strafford, ss:

I, John H. Smith, clerk of the superior court of judicature for said county, hereby certify that the foregoing is a true copy of the original.

In testimony whereof I have hereto set my hand and affixed the seal of said court, this 3d day of September, A. D. 1843.
[L. S.]
JOHN H. SMITH, *Clerk.*

Hillsborough, ss: *27th August*, 1842.

I then made known to the within named State of New Hampshire, as within commanded, that they appear at the court within mentioned, by giving to Charles F. Gove, attorney general for the within named State, in hand, a true and attested copy of the within writ, with a true and attested copy of this my return endorsed thereon.

F. FLETCHER, *D. Sheriff.*

Fees—Serv.		23
Travel,		5
Copy,	1	00
Postage,		20
	$1	48

A true copy.
Attest: J. H. SMITH, *Clerk.*

The State of New Hampshire, Strafford, ss:

At the court of common pleas, holden at Dover, within and for said county of Strafford, on the third Tuesday of January, in the year of our Lord one thousand eight hundred and forty-two, the jurors for the State of New Hampshire, upon their oath, present: That Andrew Peirce, jr., and Thomas W. Peirce, both of Dover, in the county of Strafford aforesaid, merchants, on the twentieth day of January, in the year of our Lord one thousand eight hundred and forty-two, at Dover, in the county of Strafford aforesaid, did unlawfully, knowingly, wilfully, and without any license therefor from the selectmen of the town of Dover aforesaid—the same being the town where the said Andrew Peirce, jr., and Thomas W. Peirce then resided—sell to one Aaron Sias one barrel of gin, at and for the price of eleven dollars eighty-five cents, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State.

CHARLES W. WOODMAN, *Solicitor in the absence of the Attorney General.*

This is a true bill.

ANDREW PEIRCE, *Foreman.*

A true copy.
Attest: J. H. SMITH, *Clerk.*

State of New Hampshire, Strafford, ss:

Superior court of Judicature.

Clerk's Office, September 3d, 1843.

I hereby certify that the foregoing is a true copy, and I have hereto set my hand and affixed the seal of said court.
[SEAL.]
JOHN H. SMITH, *Clerk.*

The State of New Hampshire, Strafford, ss:

At the court of common pleas, holden at Dover, within and for said county of Strafford, on the fourth Tuesday of May, A. D. 1842:

Present, the Hon. Nathaniel G. Upham, presiding justice; Hons. Hiram R. Roberts, George L. Whitehouse, justices.

The jurors for said State, upon their oath, present: That Andrew Peirce, jr., and Thomas W. Peirce, both of Dover aforesaid, merchants at Dover, in said county, on the twentieth day of January, A. D. 1842, did unlawfully, knowingly, wilfully, and without license therefor from the selectmen of said Dover—the same being the town where the said Andrew and Thomas then resided—sell, to one Aaron Sias, one barrel of gin, at and for the price of eleven dollars eighty-five cents, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State.

The said Andrew Peirce, jr., and Thomas W. Peirce, having been arraigned, pleaded not guilty, and put themselves on the country; and the solicitor for the said county of Strafford, in the absence of the attorney general, joins said issue.

Whereupon, the solicitor for said county, and the counsel for the defendants, being fully heard upon the evidence, this cause is committed to a jury, sworn according to law to try said issue, who make return of their verdict thereon upon oath, and say: "The said Andrew Peirce, jr., and Thomas W. Peirce, are guilty."

This indictment was found, and the trial as aforesaid was had, at the January term, 1842, of this court, being on the third Tuesday of said January, and continued for judgment to this term, when it is therefore considered by the court, that the said Andrew Peirce, jr., and Thomas W. Peirce, pay a fine of thirty-five dollars for the use of said county, and that they pay the costs of this prosecution, and stand committed until sentence be performed.

A true copy of record.

Attest: J. H. SMITH, *Clerk.*

Attest: J. H. SMITH, *Clerk.*

State of New Hampshire, Strafford, ss:

I, John H. Smith, clerk of the superior court of judicature for said county, hereby certify that the foregoing is a true copy.

In testimony whereof, I have hereto set my hand and affixed [SEAL.] the seal of said court, this 3d day of September, A. D. 1843.

JOHN H. SMITH, *Clerk.*

State of New Hampshire, Strafford, ss:

[SEAL.] Court of common pleas, January term, 1842.

THE STATE
vs.
ANDREW PEIRCE, JR., & THOMAS W. PEIRCE.

This was an indictment alleging that the defendants, at Dover, in

said county, on the twentieth day of January, A. D. 1842, did unlawfully, knowingly, wilfully, and without license therefor from the selectmen of said Dover, the same being the town where the defendants then resided, sell, to one Aaron Sias, one barrel of gin, at and for the price of $11 85, contrary to the form of the statute, &c.

The defendants pleaded not guilty.

Upon the call of the jury, C. W. Woodman, esq., solicitor in behalf of the State, moved that an enquiry should be made of the several jurors, whether they had formed an opinion that the license laws were unconstitutional. The defendants' counsel objected, that the court had no power to put any questions to the jurors, except those mentioned in the statute. But the court ruled, that persons who held such opinions, that they could not execute the laws of the State, were not suitable persons to serve on a jury, and directed the following questions to be put to the jurors, viz:

1. Have you formed an opinion that the law regulating licensed houses is unconstitutional, so that you cannot convict a person indicted under it for that reason, if the facts alleged in the indictment are proved, and the court hold the statute to be constitutional?

2. Do you hold any opiniens upon the subject of the license laws, so called, which will induce you to refuse to convict a person indicted under them, if the facts set forth in the indictment and constituting the offence are proved against him, and the court direct you that the law is constitutional?

3. Do you hold any opinion upon the subject of the license laws, which will induce you to convict a person indicted, if the court should direct you that the statute, under which he is indicted, is unconstitutional?

The counsel for the defendants protesting against the right of the court to cause any questions to be put to the jury, except those set forth in the statute, then proposed the four following questions, to be put to the foreman of the jury, viz:

1. "Have you counselled or advised a prosecution against the dealers in ardent spirits, knowing these respondents to be such dealers?" The court added to it, "and with a view to a prosecution against them?" and assented that it should be put in that form, but ruled that it ought not to be put as originally presented, because, if answered in the affirmative, it would not furnish a ground for excluding the juror.

2. "Have you said that a dealer in ardent spirits was as bad as a thief or robber, or words to that effect?" The court ruled that this question ought not to be put, because, if answered in the affirmative, it would not furnish a sufficient reason for setting aside the juror—it would not be an expression of opinion that the defendants had been guilty of any offence, or were liable to any punishments.

3. "Have you heard this prosecution much talked about?" This question the court directed to be asked with those before ordered to be put to the jurors.

4. "Are you sensible of any prejudice in the case?" Which the court also directed to be put with the others.

The counsel for the defendant then proposed the following question, which the court directed to be put with the others, viz:

"Are you so attached to, or connected with, the movements for the prosecutions under the license law of 1838, as to feel a bias that it is necessary for the temperance cause that the parties here arraigned should be convicted?"

The counsel for the defendant then proposed the following question, viz:

"Have you subscribed, promised, or pledged, or are you in any way bound to pay, any money or property to carry on prosecutions against persons accused under the license law?" The court added to it the following, "If you have, is this one of those prosecutions? If it is not one of those prosecutions, are they in any [way] dependent upon this, or will the success of this have any tendency to promote the success of those prosecutions?" and assented that the question proposed should be put along with the others added to it; but ruled that alone, if the answer was in the affirmative, it would not furnish a sufficient ground on which to exclude a juror. The defendants' counsel refused to have it put with the additions. The defendants' counsel then proposed the following question, viz:

"Have you considered the question of constitutionality or unconstitutionality of the license law, so called, of 1838, and come to a conclusion in your own mind on that question?" The court declined to put the question in that shape, unless some further enquiry was added—whether the juror had formed an opinion so that it could not be changed—as an answer to it, in the shape it was proposed, could not operate to exclude a juror. But the defendants' counsel refused to have it put with such addition.

The questions which had been allowed on the motion of the solicitor, and those which had been allowed on motion of the defendants' counsel, were then severally put to each of the jurors, and so answered that all were sworn—no motion being made, either by the counsel for the government, or by the counsel for the defendants, to set aside any member of the jury.

To the ruling of the court, authorizing the jury to *to* be interrogated beyond the questions mentioned in the statute, and to those rulings, by which certain of the questions proposed by the defendants were rejected, the defendants' counsel excepted.

The counsel for the State introduced evidence to prove the sale of the gin, as set forth in the indictment; and it was proved and admitted by the defendants, that they sold to said Aaron Sias, on the day alleged in the indictment, one barrel of American gin, for the price of $11 85, and took from said Sias his promissory note, including that sum. It appeared that it was part of the regular business of the defendants to sell ardent spirits in large quantities.

To sustain the prosecution, the counsel for the State relied on the statute of July 4, 1838, which is in these words, viz:

"An act regulating the sale of wine and spirituous liquors.

"Section 1. Be it enacted by the senate and house of representa-

tives in general court convened, That if any person shall, without license from the selectmen of the town or place where such person resides, sell any wine, rum, gin, brandy, or other spirits, in any quantity, or shall sell any mixed liquors, part of which are spirituous, such person, so offending, for each and every such offence, on conviction thereof, upon an indictment in the county wherein the offence may be committed, shall forfeit and pay a sum not exceeding fifty dollars, nor less than twenty-five dollars, for the use of such county.

"SECTION 2. And be it further enacted, that the third section of an —— passed July 7, 1827, entitled an act regulating licensed houses, and other acts or parts of acts inconsistent with the provisions of this act be, and the same hereby are, repealed.

"Approved July 4, 1838."

The counsel for the defendants moved the court to instruct the jury, that if the law of 1838, under which the respondents were indicted, was constitutional, the sale here was contrary to law and the note of Sias was void, and that such a payment by note was no payment, and therefore there was no sale. But the court refused so to instruct the jury, but directed them, that on the supposition the defendants could not recover the contents of the note, they might notwithstanding have violated the statute. The defendants' counsel then introduced evidence that the barrel of gin was purchased by the defendants in Boston, in the Commonwealth of Massachusetts, brought coastwise to the landing at Piscataque bridge, and from thence to the defendants' store, in Dover, and afterwards sold to Sias in the same barrel and in the same condition in which it was purchased in Massachusetts. And the defendants' counsel contended that the aforesaid statute of July 4, 1838, was unconstitutional and void, because the same is in violation of certain public treaties of the United States with Holland, France, and other countries, containing stipulations for the admission of spirits into the United States, and because it is repugnant to the two following clauses in the Constitution of the United States, viz:

"No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws." "The Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." And the defendants' counsel contended that the jury were the judges of the law as well as the fact in the case; that it was their duty to judge of the constitutionality of the act of July 4, 1838, and to form their own opinion upon that question; and that the court were not to instruct the jury relative to questions of law as in civil cases, but were merely to give advice to the jury in matters of law. The court instructed the jury, that the position that the jury were judges of the law as well as of the fact, as contended for by the defendants' counsel, was not correct, to the extent of the general terms in which it was stated; that the same rule existed in this respect in criminal cases which prevailed in civil cases; that it was the duty of the court to instruct the jury in relation to questions of law, and

that the court was responsible for the correctness of the instructions given; and in case of conviction, if the instructions were wrong, the verdict might be set aside for that cause; but that the jury had the power to overrule the instructions of the court, and decide the law contrary to those instructions, through their power to give a general verdict of acquittal; and that if they did so, and acquitted the defendants, the court could not correct the matter if the jury had erred, because the defendants could not in such case be tried again; and that the circumstance, that the jury had thus the power to overrule the instructions of the court, in case of an acquittal, did not show that they had a right to judge of the law. The court further instructed the jury, that the statute of July 4, 1838, was not entirely void, if it might have an operation constitutionally in any case; and that, as far as this case was concerned, it could not be in violation of any treaty with any foreign power which had been referred to, permitting the introduction of foreign spirits into the United States, because the liquor in question here was proved to be American gin. The court further instructed the jury that this statute, as it regarded this case, was not repugnant to the clause in the Constitution of the United States providing that no State shall, without the consent of Congress, lay any duty on imports or exports, because the gin in this case was not a foreign article, and was not imported into, but had been manufactured in, the United States. The court further instructed the jury, that this State could not regulate commerce between this and other States; that this State could not prohibit the introduction of articles from another State with such a view, nor prohibit a sale of them with such a purpose, but that, although the State could not make such laws with such views and for such purposes, she was not entirely forbidden to legislate in relation to articles introduced from foreign countries or from other States; that she might tax them the same as other property, and might regulate the sale to some extent; that a State might pass health and police laws which would, to a certain extent, affect foreign commerce, and commerce between the States; and that this statute was a regulation of that character, and constitutional. And the court further said, in conclusion, (the sale being admitted, and the instructions of the court that the law, as applicable to this case, was constitutional, having been given,) that nothing farther remained in this particular case, unless the jury saw fit to exercise the power that they possessed of overruling the instructions of the court, and giving a verdict contrary to those instructions; and that if they did so, and acquitted the defendants, the court could not set aside the verdict, even if an error had been committed.

The jury having returned a verdict that the defendants were guilty, the defendants excepted to the foregoing instructions, and to what is said in conclusion of the charge as aforesaid, and filed this bill; which was sealed and allowed.

JOEL PARKER.

A true copy,
Attest: J. H. SMITH, *Clerk.*

STATE OF NEW HAMPSHIRE, *Strafford, ss:*

I, John H. Smith, clerk of the superior court of judicature for said county, hereby certify that the foregoing is a true copy. In [L. S.] testimony whereof, I have hereto set my hand and affixed the seal of said court, this 3d day of September, A. D. 1843.

JOHN H. SMITH, *Clerk.*

STATE OF NEW HAMPSHIRE, *Strafford, ss:*

Superior court of judicature, December term, 1842.

ANDREW PEIRCE, JR., and THOMAS W. PEIRCE, plaintiffs in error,
vs.
THE STATE OF NEW HAMPSHIRE.

And the said Andrew Peirce, jr., and Thomas W. Peirce, come into court, and say that, in the record and proceedings aforesaid, and also in the giving of the judgment aforesaid, there is manifest error in this, to wit:

That, before the court permitted the jurors, who tried or should have tried said case, to be sworn, they were compelled to answer certain interrogatories proposed by the counsel for the State, other than, and different from, those prescribed by the statute; and the counsel for the respondents were not permitted by the court to propose certain other interrogatories, as appears by the bill of exceptions signed and filed in the case.

There is also error in this, to wit, that the court refused to instruct the jury, although requested by the counsel for the respondents so to do, that if the law of 1838, under which the respondents were indicted, was constitutional, the sale here was contrary to law, and the note of Sias was void; and that such a payment, by note, was no payment, and therefore there was no sale.

There is also error in this, that the court instructed the jury, that the law of 1838 aforesaid is not repugnant to the Constitution of the United States.

There is also error in this, that the court instructed the jury that the same rule prevailed in relation to the jury judging of the law in criminal cases as civil; and that, although the jury hath power to overrule the instructions of the court, and decide the law contrary to those instructions, although their power to give a general verdict of acquittal, &c., this did not show that they had the right to judge of the law.

There is also error in this, that the court instructed the jury that the sale being admitted, *that* nothing remained for them, in this particular case, unless they saw fit to exercise the power that they possessed of overruling the instructions of the court, and giving a verdict contrary to those instructions.

There is also error in this, that the respondents have been pronounced guilty and fined by the court, without a trial by jury, in contravention of the laws and constitution of the State of New Hampshire.

There is also error in this, that the court instructed the jury they were not judges of the law.

There is also error in this, to wit, that the judgment aforesaid was given against the said Andrew Peirce, jr., and Thomas W. Peirce; whereas, by the laws of the land, the judgment in said case ought to have been given, that the said Andrew Peirce, jr., and the said Thomas W. Peirce go thereof quit without day.

There is also error in this, to wit, that the said judgment is, in other respects, informal and illegal.

And the said Andrew Peirce, jr., and Thomas W. Peirce pray that the judgment aforesaid, for these errors and the other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that they may be restored to all things which they have lost by occasion of the said judgment.

ANDREW PEIRCE, Jr.,
THOMAS W. PEIRCE,
By their attorney, JOHN P. HALE.

State of New Hampshire, Strafford, ss:

I, John H. Smith, clerk of the superior court of judicature for said county, hereby certify, that the foregoing is a true copy of the original.

In testimony whereof I have hereto set my hand and affixed the seal of said court this 3d day of September, A. D. 1843.

[L. S.] JOHN H. SMITH, *Clerk.*

The State of New Hampshire, Strafford, ss:

At the superior court of judicature holden at Exeter, in and for the first judicial district in said State, on the third Tuesday of July, A. D. 1843.

Present: The hon. Joel Parker, chief justice; the hon. J. Gilchrist, associate justice.

ANDREW PEIRCE, jr., and Thomas W. Peirce, both of Dover, in said county of Strafford, merchants, plaintiffs in error,
vs.
THE STATE OF NEW HAMPSHIRE, defendants in error.

For whereas, in the record and process, and also in the giving of judgment, in a suit which was in our court of common pleas, held at Dover, in and for said county of Strafford, before the honorable Nathaniel G. Upham, presiding justice, and his associates, our justices of said court of common pleas for said county, on the 4th Tuesday of May, A. D. 1842, by our indictment, found by the grand jury for the body of said county, at the January term, A. D. 1842, of said court of common pleas, against said Andrew and Thomas, that said Andrew and Thomas, at Dover, in said county, on the twentieth day of January, A. D. 1842, did unlawfully, knowingly, wilfully, and without license therefor, from the selectmen of said Dover, the same being the town where the said

Andrew and Thomas then resided, sell, to one Aaron Sias, one barrel of gin, at and for the price of eleven dollars eighty-five cents, contrary to the form of the statute in such [case] made and provided, and against the peace and dignity of the State; when, at said January term, A. D. 1842, a trial was had upon said indictment, after the said Andrew and Thomas having been arraigned and pleaded not guilty, and a verdict returned that the said Andrew and Thomas were guilty; whereupon the same was continued to the said May term of said court of common pleas for judgment, and then judgment was rendered that the said Andrew and Thomas pay a fine of thirty-five dollars to and for the use of said county, and pay costs of prosecution, and stand committed until sentence be performed, manifest error hath intervened, as it is said, to the said Andrew and Thomas, as by their complaint we perceive; the record of which judgment we, for certain reasons, have caused to be brought before us, in our superior court of judicature, holden at Dover aforesaid, at the December term, A. D. 1842; and the said Andrew and Thomas, by John P. Hale, esq., their attorney, come into court and say, that in the record and proceedings aforesaid, and also in the giving of the judgment aforesaid, there is manifest error, in this, to wit, that before the court permitted the jurors, who tried or should have tried said case, to be sworn, they were compelled to answer certain interrogatories, proposed by the counsel for the State, other than and different from those prescribed by the statute; and the counsel for the respondents were not permitted by the court to propose certain other interrogatories, as appears by the bill of exceptions signed and filed in the case.

There is also error in this, to wit, that the court refused to instruct the jury, although requested by the counsel for the respondents so to do, that if the law of 1838, under which the respondents were indicted, was constitutional, the sale here was contrary to law, and the note of Sias was void, and that such a payment by note was no payment, and therefore there was no sale.

There is also error in this, that the court instructed the jury that the law of 1838, aforesaid, is not repugnant to the Constitution of the United States.

There is also error in this, that the court instructed the jury that the same rule prevailed in relation to the jury judging of the law in criminal cases as in civil; and that, although the jury had the power to overrule the instructions of the court, and decide the law contrary to those instructions, through their power to give a general verdict of acquittal, &c., this did not show that they had the right to judge of the law.

There is also error in this, that the court instructed the jury that the sale being admitted, that nothing remained for them in this particular case, unless they saw fit to exercise the power that they possessed of overruling the instructions of the court, and giving a verdict contrary to those instructions.

There is also error in this, that the respondents have been pronounced guilty, and fined by the court, without a trial by jury, in contravention of the laws and constitution of the State of New Hampshire.

There is also error in this, that the court instructed the jury they were not judges of the law.

There is also error in this, to wit, that the judgment aforesaid was given against the said Andrew Peirce, jr., and Thomas W. Peirce, whereas, by the laws of the land, the judgment in said case ought to have been given, that the said Andrew Peirce, jr., and the said Thomas W. Peirce go thereof quit without day.

There is also error in this, to wit, that the said judgment is in other respects informal and illegal.

And the said Andrew Peirce, jr., and Thomas W. Peirce, pray that the judgment aforesaid for these errors, and the other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that they may be restored to all things which they have lost by occasion of the said judgment; and at the said December term, A. D. 1842, of this court, the said State of New Hampshire freely come into court here, and say, that there is no error, either in record or proceedings aforesaid, or in giving judgment aforesaid; and they pray that the court here may proceed to examine, as well the record and proceedings aforesaid, as the matters aforesaid above assigned for error; and that judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

By their attorney: LYMAN B. WALKER.

And the cause was continued from said December term, A. D. 1842, to this term for advisement; and now the court, having examined the record and proceedings aforesaid, and mature deliberation had thereon, it is considered by the court, that the judgment aforesaid, in the said court of common pleas, be, and hereby is, affirmed.

Attest: J. H. SMITH, *Clerk.*

STATE OF NEW HAMPSHIRE, *Strafford, ss:*

Superior court of judicature, clerk's office, September 3d, 1843.

I, John H. Smith, clerk of said court, hereby certify that the foregoing is a true copy as of record, and I have hereto set my [SEAL.] hand and affixed the seal of said court, the day and year last aforesaid.

JOHN H. SMITH, *Clerk.*

THE STATE OF NEW HAMPSHIRE,
Strafford county, ss:

I, John H. Smith, clerk of the superior court of judicature for said county, hereby certify that the enclosed papers numbered from one to seven, inclusive, are true copies of papers filed, of original papers and of records, used and made in the case of Andrew Peirce, jr., and Thomas W. Peirce, plaintiffs in error, against the State of New Hampshire.

In testimony whereof, I have hereto set my hand and affixed [SEAL.] the seal of said court, this third day of September, A. D. 1843.

JOHN H. SMITH, *Clerk.*

STATE OF NEW HAMPSHIRE,
Strafford county, ss:

I, Joel Parker, chief justice of the superior court of judicature, for said county of Strafford, hereby certify, that John H. Smith, whose signatures are affixed to the papers hereto annexed, is clerk of the said superior court of judicature, and has the keeping of the files, records, and proceedings of said superior court of judicature, and is the proper officer, according to law, to make out and to certify thereof, and that full faith and credit are due, and ought to be given, to his acts and attestations done as clerk aforesaid; and that his attestation to the papers hereto annexed is in due form of law.

In witness whereof, I have hereunto set my hand and caused the seal of said superior court of judicature, to be hereunto [SEAL.] affixed this ninth day of October, in the year of our Lord one thousand eight hundred and forty-three.

J. PARKER.

United States of America, District of New Hampshire, ss:

To his excellency Henry Hubbard, governor of the State of New Hampshire, and to the honorable Lyman B. Walker, attorney general of the same State, greeting:

Whereas there has issued, with my allowance, having taken due security, a writ of error bearing date the ninth day of October, A. D. one thousand eight hundred and forty-three, and bearing test of the chief justice of the United States, directed to the chief justice and the other justices of the superior court of judicature, of the said State of New Hampshire, holden within and for the first judicial district of the said State, wherein it is suggested, that in the record and process, and also in the rendering of judgment in a certain suit in the said court by indictment, wherein the said State of New Hampshire is prosecutor, against Andrew Peirce, jr., and Thomas W. Peirce, both of Dover, in the said State, defendants, a manifest error has intervened to the great damage of the said Andrew Peirce and Thomas W. Peirce, and contrary to the Constitution and laws of the United States, as the said Thomas and Andrew have in their complaint alledged; and the said chief justice and other judges are thereby commanded, if judgment thereon be given, that under their seals, or the seals of one of them, they so distinctly and openly send the record and process in the said suit, and all things concerning the same, together with the said writ, so that the same be had and returned to the next term of the Supreme Court of the United States, to be holden at Washington, in the District of Columbia, on the second Monday of January next ensuing; that the record and process aforesaid being inspected, the said Supreme Court may cause to be done thereupon what of right ought to be done.

You, therefore, as functionaries of the said State of New Hampshire, and in your official capacities properly representing the said State, will please to take notice of the said writ of error, and of the return and filing of the same as aforesaid, and you are hereby cited as such func-

tionaries, and in your official capacities, on behalf of the said State of New Hampshire, to appear, if you see cause, at the said Supreme Court of the United States so to be holden as aforesaid, and to make answer thereto.

Given under my hand and seal this ninth day of October, A. D. one thousand eight hundred and forty-three.

JOSEPH STORY, [SEAL.]

One of the justices of the Supreme Court of the United States.

NEW HAMPSHIRE, *ss:* *November* 25, 1843.

I have left at the last and usual place of abode of the before named Henry Hubbard, governor as aforesaid, and of Lyman B. Walker, attorney general as aforesaid, a true and attested copy of the foregoing citation.

NATHANIEL WIGGIN, *Dep. Marshal.*

UNITED STATES, *ss:*

The President of the United States to the chief justice and other justices of the superior court of judicature, in and for the first judicial district of said State of New Hampshire, greeting:

[L. S.]

Because that in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between the State of New Hampshire and Andrew Peirce, jr., and Thomas W. Peirce, both of Dover, in said State of New Hampshire, which suit was an indictment found at the January term, 1842, of the court of common pleas, holden at Dover, within and for the county of Strafford, by the grand jurors for the body of said county, against the said Andrew Peirce, jr., and Thomas W. Peirce, a manifest error has intervened, to the great damage of the said Andrew Peirce, jr., and Thomas W. Peirce, as in their complaint has been stated; and as it is just and proper that the error, if any there be, be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that if judgment thereof be given, then, under your seals, or the seal of one of you, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the *first* Monday of January next, at Washington, being the present seat of the National Government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness, the honorable Roger B. Taney, esquire, chief justice of the said Supreme Court, at Washington aforesaid, this ninth day of October, in the year of our Lord one thousand eight hundred and forty-three, and of the independence of the United States the sixty-eighth.

JOHN L. HAYES, *Clk.*

Allowed by me, the——the requisites of the laws of the United States having been complied with. JOSEPH STORY,

One of the justices of the Sup. Ct. U. S.